IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12228 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAILASH @ BABA KISHORILAL SAGAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12228 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by District Magistrate, Kheda District at Nadiad, on 25th August, 2004 in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 27th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration two criminal cases registered against the petitioner under Section 379 of the Indian Penal Code for theft of oil. Secondly the detaining authority took into consideration three incamera statements of the witnesses. First statement as recorded by the sponsoring authority on 21st May, 2004 and verified by the detaining authority on 23rd August, 2004, second statement as recorded by the sponsoring authority on 23rd May, 2004 and verified by the detaining authority on 23rd August, 2004 and third statement as recorded by the sponsoring authority on 24th May, 2004 and verified by the detaining authority on 23rd August, 2004. The identities of the witnesses are not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. In both the cases registered against the petitioner under Sections 379 and 511 of the Indian Penal Code. It was alleged that in the first case, the petitioner committed theft in respect of oil from pipe line passing from Viramgam to Vadodara at Pij, while in second case, it was alleged that at village Kanjari, the petitioner committed theft of oil in stealing oil in pipe line passing from Koyali - Viramgam - Siddhpur. The first offence came to be registered before Vaso Police Station on 7th October, 2003 against the petitioner, while second offence came to be registered before Chakalasi Police Station on 4th May, 2004 against the petitioner. As per the allegations reveal from the investigation papers, which were considered exhaustively by the detaining authority, in view of the detaining authority, the petitioner was a habitual offender of committing the offence of theft of oil.

4. The detaining authority also took into consideration three incamera statements of the witnesses as referred above. In first statement, the witness referred to the activities of the petitioner of theft of

oil on account that the witness was knowing the petitioner and was aware of his activities. Before a month of recording of the statement of the witness at one evening when the witness was present in his field, the petitioner demanded to keep eight barrels diesel in a room situated at the field of the witness. On refusal of the witness, the petitioner was excited and agitated and threatened the witness. On the following day of this incident, while witness was standing at Narsanda Bus Stand, the petitioner approached the witness along with one more person. The witness was accosted and asked that why he denied to keep the barrels at his field, the petitioner and his accomplices started beating the witness and the petitioner took out knife from his shirt pocket and attempted to inflict a blow on the witness. On shouting by the witness, the person gathered and intervene, so the witness could escape himself. The crowd, thereafter, removed, the petitioner and his accomplices from that place, though person started running helter-skelter and atmosphere of terror was spread. The second witness also stated that he knew the petitioner and after arrested in transporting of illegal liquor cases, the petitioner was involved in the activities of committing the theft of oils from the pipe lines. Before a month of recording of the statement of the witness, the petitioner and his accomplices approached the witness at his field and demanded to excavate the land to check pipe line passing through beneath of the land of the witness. The witness refused, to excavate his land. After threatening the witness, the petitioner had gone away from the field. After 2-3 days of the incident, while the witness was passing through Piplag Cross Road, he was accosted by the petitioner and was asked that why the witness refused to excavate his land at the field, the witness was beaten by the petitioner and to save himself the witness raised shouts, the shop owners, traders and other persons ran to the place to rescue the witness. On seeing the petitioner, the persons ran helter-skelter on account of fear of the petitioner. The shops were closed and public life was disturbed. The third witness also stated that he knew the petitioner and the petitioner was head strong person. The petitioner was arrested by the police in cases of transporting of illegal liquor. Before 20 to 25 days from recording of the statement, on one evening the petitioner approached the witness at his field with one tempo loaded with barrels. The petitioner demanded to keep these barrels in a room constructed at the field of the witness. The witness refused the demand of the petitioner, on the following day at the village Vadtal at about 12.00 P.M., the witness was accosted by the

petitioner and his accomplices and was asked that why the petitioner was denied to keep the barrels at the field of the witness. The witness was beaten by the petitioner and, therefore, the petitioner took out a rampuri knife and aimed at the chest of the witness and the witness was threatened. On shouting of help raised by the witness, a crowd was gathered but none dared to rescue the witness, the shops were closed, the public life was disturbed and the witness could escape himself on finding an opportunity.

5. Relying upon the above materials, the detaining authority came to the conclusion that the petitioner was engaged in anti social and illegal activities of committing theft of oil from the pipe lines and was in habit of harassing innocent citizens. In view of the detaining authority, the petitioner was a dangerous person within the meaning of PASA Act. The petitioner was head strong, ferocious and dangerous person and was in habit of administer threat to the innocent citizen and to beat them. The detaining authority came to the conclusion that these illegal activities of the petitioner were prejudicial to the maintenance of the public order. After considering remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act to prevent the activities of the petitioner forthwith. The detaining authority, therefore, passed an order of detention which is under challenge in this petition.

6. Learned advocate Mr.M.R.Prajapati for the petitioner and learned AGP Mrs.H.B.Punani for the respondent No.3 were heard at length.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by activities of the petitioner the public order was disturbed.

8. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of the public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were caused or were likely to cause harm,

danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While taking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of "breach of law and order" and the cases falling within the category of "breach of public order".

9. Referring to the two criminal cases filed against the petitioner for offences punishable under the Indian Penal Code for committing of theft of oil through the pipe lines and going through the investigation papers as placed on record, it is found that these cases came to be filed against the detenu because during the investigation, he was found to have committed the offence of theft as defined and punishable under the penal statue of the country. The act which is alleged in the criminal cases are the offences and so the cases came to be registered against the petitioner. However, merely filing of criminal cases under the penal statue would not result in a conclusion that the activities of the petitioner were disturbing the public order. At the most, the petitioner might have committed breach of provisions of law constituting offences as per the penal statue, for which the petitioner shall be tried and may be punished, if found guilty. But surely the act constituting the offence cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigation papers indicate that in the activities alleged through these cases, the society at large or section thereof was involved. Therefore, these cases may be instances of breach of law and order and may be offences, but cannot be branded as activities disturbing the public order.

10. While referring to the incamera statements, it must be borne in mind that while reaching the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and, thereafter, to come to the conclusion that such activities were capable of disturbing the public order. The incidents as narrated by through the incamera statements revealed individual disputes more than to involve the society at large or disturbing the even tempo of the life of the community. The potentiality of the act alleged through incamera statements even from the bare reading of them, is not capable of disturbing the even tempo of the life of the community or the society at large or section thereof. No widespread danger or harm to the society could be

inferred from the statements of the witnesses. Therefore, even after taking the statements of their face value, the incidents narrated may be instances of disturbing the law and order, which would be taken care of by the general law, but these instances cannot be said to have affected the maintenance of public order. Even employing specific phraseology by the witnesses in the statements or by the detaining authority in reasoning would not stretch the case to the extent of the activities the public order.

11. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20, 21 and 22 as under.

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

"21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point

including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases.

12. The present set of facts are squarely covered by the above decision of Ashokbhai Jivraj @ Jivabhai Solanki [Supra], the subjective satisfaction, therefore, arrived at by the detaining authority in respect of disturbance of the public order by the alleged activities of the petitioner, cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by the District Magistrate, Kheda District, Nadiad on 25th August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu Kailash alias Baba Kishorilal Sagar is hereby ordered to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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